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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,036	10/11/2001	Paul Wingert	671.003US1	3735

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EXAMINER

TRUONG, THANH K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 06/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

**Office Action Summary**

Application No.

09/977,036

Applicant(s)

WINGERT, PAUL

Examiner

Thanh K Truong

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 May 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 19-24, 27-35 and 38-40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

- 5) ☒ Claim(s) 5-7 is/are allowed.

- 6) ☒ Claim(s) 1-4, 19-24, 27-32, 34, 35, and 37-40 is/are rejected.

- 7) ☒ Claim(s) 33 is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to applicant's amendment, Paper No. 5, received on May 6, 2003.
2. Applicant's cancellation of claims 8-18, 25 and 26 in Paper No. 5 is acknowledged.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 40 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 40, line 2, the recitation: "a first distribution mechanism driven in a reciprocation motion" is contradicted to the disclosure of the specification (page 8, lines 10-19 and figure 3A). The Applicant discloses a distribution mechanism 350 driven in a curvical motion along sloping wall 139.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3721

6. Claims 19, 21, 22, 24, 27-35, 37 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Rasmussen et al. (4,310,036).

Rasmussen discloses an agricultural bagger apparatus comprising: a primary compression mechanism including shaft 52 and teeth 46; an input hopper 50 that receives agricultural feed, the hopper having a sloping wall 70 and lower end exit chute; a tunnel 32 and a means (secondary compression mechanism 82) for displacing pressure within the tunnel from above the primary compression mechanism to a higher portion of the tunnel interior.

The secondary compression mechanism including: the motorized pistons 88; hinged 83 apparatus on one side of the feed tunnel wall and connected to the piston arm 89, and the secondary compression mechanism compacts the feed above the primary compression mechanism by adding pressure to the feed.

Rasmussen further discloses means 62 for: displacing pressure along the sloping wall toward the primary compression mechanism in order for the feed to easily fall through the hopper to the primary compression mechanism (column 3, lines 54-62); for sweeping the feed along the sloping wall in a cervical motion; for agitating the feed at a circumference of the cervical motion at a distance from the sloping wall; and for sweeping the feed along the sloping wall in a first and second separated cervical motion; and the motorized piston are periodically activated for a compression cycle and then withdrawn, leaving space for more feed to be deposited by primary compression mechanism (column 5, lines 22-32).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goar (3,881,407).

As discussed above in paragraph 6 of this office action, Rasmussen discloses the claimed invention, except for the secondary compression mechanism is located on the exterior of the feed tunnel and extending into the feed tunnel.

Goar discloses (figures 6-8) a compression mechanism 50 includes a hinged apparatus that protrudes outward of the feed tunnel wall at the noncompacting stage and extending inward into the feed tunnel at the compacting stage, the compression mechanism 50 provides a means to push and compacting the material further into the chamber before the material being discharge into a container. Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen apparatus by locating the secondary compression mechanism on the exterior of the feed tunnel and extending into the feed tunnel as taught by Goar to eject and compact the material from the chamber into the storage container (column 2, lines 51-53).

Furthermore, the examiner maintains the Official Notice in the previous office action (Paper No. 4) that it would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the secondary compression mechanism

Art Unit: 3721

on the exterior of the feed tunnel and extending into the feed tunnel because of the equivalence of the locations of the secondary compression mechanism (interior vs. exterior) for their use in the art and the selection of any of these known equivalents, to displace pressure from above the primary compression mechanism and toward an upper portion of the tunnel cavity, would be within the level of ordinary skill in the art as evident by the teaching from Goar.

9. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036).

As discussed above in paragraph 6 of this office action, Rasmussen discloses the claimed invention, except that the motorized pistons are periodically activated as described in claim 39.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to periodically activated the motorize pistons as cited in claim 39 to achieve the result desired, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

10. Claims 1-3 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 6 of this office action, Rasmussen discloses the claimed invention, except that the first motor is coupled to the wall of the input hopper.

Goth discloses an apparatus comprising a motor 16 is coupling to a wall of a hopper to keep the material in motion by loosening and preventing the material from adhering to each other inside the hopper (column 1, lines 28-31 and lines 47-48).

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to modify Rasmussen first distribution mechanism by applying the teaching from Goth to couple the motor, for driving the distribution mechanism, to the sloping wall of the input hopper for loosening and keeping the material in motion before feeding to the primary compression mechanism.

The modified Rasmussen further discloses: an elongated first bar 13 attached along its length to the first motor, and the first bar forms a non-parallel angle 14 relative to a radius of rotation of the first bar.

The plane of the first bar is substantially parallel to the surface on which it is coupling to, therefore in the modified Rasmussen the plane of the first bar would be parallel to the sloping wall and an axis of rotation the first motor would be perpendicular to the sloping wall, and a first distribution mechanism driven in a cervical motion having both up and down components 13, 14, 15 adjacent to the sloping wall in order to prevent feed bridging before the primary compression mechanism.

11. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rasmussen et al. (4,310,036) in view of Goth (6,379,086).

As discussed above in paragraph 10 of this office action, the modified Rasmussen discloses the claimed invention, except for a second motor coupled to the sloping wall of the input hopper.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to install a second motor coupled to the sloping wall of the input hopper, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

***Allowable Subject Matter***

12. Claims 5-7 are allowed.
13. Claim 33 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

14. Applicant's arguments filed May 6, 2003 have been fully considered but they are not persuasive.

In response to the Applicant's argument that: "if piston 88 were to activate and extend plate 86 while the primary compression mechanism were operating, substantial amounts of silage would accumulate behind plate 86". Rasmussen, figure 3 and column 5, lines 48-53, discloses that the plate 82 is positioned so that its lower edge is coincident with the top surface of comb 48, "thereby preventing any silage from being forced behind the cleanout plate 82 when in its retracted position".

Furthermore, the recitation of the amended claims 19 and 37 – "during operation of the primary compression mechanism" is a functional language to claim the intended use of an apparatus. Since it has been held that a recitation with respect to the manner



Art Unit: 3721

in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

*Ex parte Masham*, 2 USPQ2d 1647 (1987).

In response to the Applicant's argument regarding to claims 20 and 23, the examiner provides the reference (Goar – 3,881,407) to the 103 rejection (see paragraph 8 above).

In response to the Applicant's argument that: "there can be no bridging possible in Goth", and therefore no motivation to combine Goth with Rasmussen. Goth provides a loosening mechanism that break up the materials, which exhibit a "high cohesiveness", and tend to "cake" or to form "lumps" (column 1, lines 28-31).

### ***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

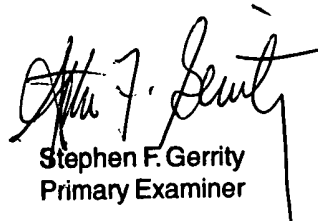
Art Unit: 3721

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.

tkk  
June 16, 2003

  
Stephen F. Gerrity  
Primary Examiner